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ORDERS OF THE SEVENTH COURT

UNITED STATES COURT OF APPEALS

For The Seventh Circuit
Chicago, Illinois 60604

January 28, 2000

Before

Honorable Frank H. Easterbrook, Circuit Judge
Honorable Ilana Diamond Rovner, Circuit Judge
Honorable Diana P. Wood, Circuit Judge

Nos. 99-1422 & 99-2111

LOUIS F. GAINES,
Plaintiff-Appellant,

v.

WHITE RIVER ENVIRONMENTAL PARTNERSHIP, et al.,
Defendants-Appellees.

Appeal from the United States District for the Southern District of Indiana , Indianapolis Di-

No. 98-1741-C-M/S

Larry J. McKinney, Judge

Nos. 99-3899 & 99-4048

IN THE MATTER OF:
LOUIS F. GAINES
Petitioner

Petitions for Writ of Mandamus to the United States District Court

for the Southern District of Indiana, Indianapolis, Division

No 98-1741-C M/S

Larry J. McKinney, Judge

ORDER

On consideration of the petition for rehearing filed by plaintiff-appellant on January 18, 2000, all the jusges on the panel having votes to deny the same.

IT IS HEREBY ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

Unplublished Order
Not to be cited per Circuit Rule 53

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

Before

Hon. FRANK H. EASTERBROOK, Cir. Judge

Hon. ILANA DIAMOND ROVER, Cir. Judge

Hon. DIANE P. WOOD, Cir. Judge

Submitted December 16, 1999*
Decided January 3, 2000

Nos. 99-1322 & 99-2111

LOUIS F. GAINES,
Plaintiff-Appellant,

v.

WHITE RIVER ENVIRONMENTAL PARTNERSHIP, et al.,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division

No. 98-1741-C-M/S

	Larry J. McKinney, Judge
3.	
IN THE MATTER OF: LOUIS F. GAINES, Petitioner.	Petitions for Writs of Mandamus to the United States District Court for the Southern District of Indiana, Indianapolis, Division
	No. 98-1741-C M/S
	Larry J. McKinney, Judge

* After an examination of the briefs and the records, we have concluded that oral argument is unncessary. Thus appeal number 99-1422 and appeal number 99-2111 are submitted on the briefs and the records. See Fed. R. App. P 34(a).

ORDER

Louis Gaines, an African-American male employed as an Operation Specialist for the Defendants White River Environmental Partnership WREP), filed this employment discrimination suit in December 1998 under Title VII and the Age Discrimination in Employment Act. In early 1999, Gaines twice moved for a preliminary injunction to prevent what he believed was retaliatory behavior by WREP. The district court denied each request, and Gaines appeals both rulings. Also before us are two petitions for writs of mandamus seeking to compel Judge McKinney to grant leave to fie an amended complaint and also to recuse himself form the case. We affirm the denials of injunctive relief and deny Gaines petitions for writs of mandamus.

Gaines has held his current job since January 1994. After filing four charges with the EEOC, HE SUED IN December 1998 alleging discrimination based on race and age. His complaint sets forth a litany of events that Gaines believes shows that WREP is maintaining a "Hostile Working Environment." Most of his allegations relate to a dispute over the use of the company's e-mail system and WREP's denials of

Gaines' request for job trnasfers and training opportunities.

In Janury 1999, WREP announced that all ten of its operation specialists would be required to work at least 28 days per year in the Solids Handling department. Gaines describes this as the most dangerous department at WREP and believes that WREP is sending him there to retaliate for this December 1998 lawsuit. On February 4, Gaines sought a preliminary injunction to prevent implementation of the new work assignment. The district court ordered Gaines to "tender" his proposed preliminary injunction by February 10. This order apparently confused Gaines, who "tendered" $105 as a filing fee and noted that he is seeking $1.2 mission in damages.

The district court then denied Gaines' motion, characterizing it as little more than an itemization of the money damages Gaines wants. Gaines filed a nlotice of appeal, which we docketed as case number 99-1422.

In addition to taking an appeal, Gaines also moved again for a preliminary injunction. This time, in ordering Gaines to tender a proposed injunction, the district court carefully set forth the legal standards for a preliminary injunction and

reminded Gaines to submit oth facts and legal analysis in support of his motion. Later the court ordered Gaines to suplement his motion with various medical records. After Gaines on April 22 moves for an immediate ruling, the district court refused to issue the preliminary injunction. Judge McKinney concluded that Gaines failed to identify evidence and circumstances warranting a preliminary injunction and, additionally, had not complied with the district court's order to provide medical records. Gaines filed another appeal, which we docketed as case number 99-2111.

Gaines given us no reason to reverse the district court. A preliminary injunction will not be granted absent a showing that the movant is likely to prevail on the merits, lacks an adequate remedy at law, and will suffer irreparable harm without immediate relief. See Ferrell v. United States Dep't. of Hous. and Urban Dev., 186 F.3d 805, 811 (7th Cir. 1999). But Gaines does not directly address any of these factors or demonstrate how his motions satisfied them. Instead, Gaines rehashes his assertions that WREP is retaliating by requiring him to work in the Solids Handling department, though he still offersno reason to conclude that he is being treated differently than any of the other nine Operation Specialists. Nor does he explain his failure to comply with the district court's demand for medical records. We observe that Judge McKinney

carefully explained what Gaines must do to obtain a prliminary injunction and pointed him towards evidence that might support his request. In light of this, we fail to see how the district court abused its discretion in denying GAines' motion, especially since such interlocutory relief is rare in employment discrimination cases. See Hetreed v. Allstate Ins. Co., 135 F.3d 1155, 1158 (7th Cir. 1998) (noting that interlocutory relief such as a preliminary injunction had never been granted by this court in an employment discrimination case).

While these appeals were pending, Gaines also filed with us two petitions for writs of mandamus. The first number 99-3899, seeks to compel the district court to accept his amended complaint. A decision on a motion to amend a complaint is not immediately appealable, but rather is reviewable at the end of a case. See Wingerter v. Chester Quarry Co., 185 F.3d 657, 662 (7th Cir. 1999); Bisciglia v. Kenosha Unified School Dist. No. 1, 45 F.3d 223, 229-230 (7th Cir. 1995)(reversing in part due to an erroneous denial of a motion to leave to amend a complaint). A writ of mandamus is an extraordinary remedy which is not to be used as a replacement for an appeal. See Eisenberg v. United States Dist. Court for the Southern Dist. of Illinois, 910 F.2d 374, 375 (7th Cir. 1990). Furthermore, since the decision is reviewable at the end of the case, Gaines will not suffer

irreparable harm without the writ. see In re Rhone-Poulenc Rorer Pharmaceuticals, Inc., 138 F.3d 695, 697 (7th Cir. 1998), and, thus we deny the writ.

The second petition, number 99-4048, calls for the recusal of Judge McKinney because of his alleged bias aginst Gaines. Gaines filed a motion for recusal and a supporting affidavit in districrt court under 28 U.S.C. Section 144 in January 1999. Thedenial of that motion is reviewable on appeal, see United States v. Towns, 913 F.2d 434, 443 (7th Cir. 1990), and, therefore it is not an

appropriate subject for mandamus because Gaines cannot show he will suffer irreparable harm without the writ, see In re Rhone-Poulenc, 138 F.3d at 697. Furthermore, Gaines' claim is based only on adverse rulings that Judge McKinney rendered on his motions, and is therefore meritless. See Marozsan v. United STates, 90 F.3d 1284, 1290 (7th Cir. 1996).

In closing, we note that Gaines has filed a total of five appeals and two petitions for writs of mandamus with this court over the one-year life of his lawfuit. In this court he continues to challenge interlocutory rulings despite having been informed in three cases already decided that

our authority to review decisions of the district court that are not yet final is limited. Accordingly, we admonish Gaines that future efforts to obtain immediate review of interlocutory orders run the risk of sactions under Federal Rule of Appelate Procedure 38.

For the foregoing reasons, we ARRIRM the judgments in appeal number 99-1422 and appeal apprel 99-2111, and DENY the petitions for writs of mandamus in case number 99-3899 and case number 99-4048.

ENTRY OF THE DISTRICT COURT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

LOUIS F. GAINES,
Plaintiff,

vs.

IP 98-1741-
C-M/S

WHITE RIVER ENVIRONMENTAL PARTNERSHIP,
et al,
Defedants

ENTRY DISCUSSING PENDING MATTERS AND DIRECTING FURTHER PROCEEDINGS

The court, having considered the above action and the matters which are pending, makes the following rulings:

1. The plaintiff's motion to modify trial date, filed on October 12, 1999, is granted. The court will reet the action for trial at whatever time the parties are prepared for trial and the calendar of the court permits.

2. The plaintiff's motion for trial by court filed on June 18, 1999, is denied as moot.

3. The plintiff's EEOC Notice to Court, filed on July 12, 1999, and pertaining to charge number 240991616 with the Equal Employment Opportunity Commission, requires no action from the court.

4. The plaintiff's motion to supplement medical records for third preliminary injunction filed on October 29, 1999, is granted, although neither this supplement nor the other materials presented by the plaintiff demonstrate that a preliminary injunction could properly be entered in this action.

5. The plaintiff's motion for a preliminary injunction, filed on June 7, 1999, is denied for the reasons priviously stated in conjunction with the court's determination tht the plaintiff was not entitled to injunctive relief at this stage in the case and for the further reasons supplied by the Court of Appeals in Gaines v. White River Environmental Partnership, 2000 WL 6199 (7th Cir. January 3, 2000)(unplublished).

6. The plaintiff's motions to question Judge McKinney, filed on August 23 and November 1, 1999, are each denied.

7. The plaintiff's motion to correct harmful errors, filed on June 18, 1999, and his third motion to amend complaint and correct harmful error,

filed on August 23, 1999, are each denied. The issues in this action will remain as presently configured through the pleadings. The expansion of the action, to include the plaintiff's claims of retaliation at this point is not warrnted. The "prejudicial" or other errors the plaintiff assets are rulings or aspects of the development of this action with which the plaintiff does not agree. The court finds no error in its earlier rulings, and no "errors" to be "corrected." The same ruling, and for the same reason is made with respect to the plaintiff's third motion to correct harmful errors and for all due relief, filed on February 17, 2000. Furthermore, the submission of copies of this court's Entries as the first appendix in the plaintiff's brief filed on February 17, 2000, is improper and unnecessary. Those materials are stricken and shall be retkurned to the plaintiff with his copy of this Entry. In addition, the parties are notified that if in the future the court discovers redundant material it will be stricken and returned to the party tendering it.

8. The plaintiff's motions for court to take judicial notice, filed on March 16 and 28, 2000, contribute nothing toward the development of this action at this point. The plaintiff's voluminous but rhetorical material will not take the place of material information to support his claims. The motions of March 16 and 18, 2000 are denied.

9. The parties' statements and reports regarding discovery will be the basis of further directions from the court concerning discovery.

Those directions will be issued as soon as circumstances permit.

10. The plaintiff's motion to sanction defendants, filed on June 21, 1999, is denied. The plaintiff's motion to compel and enforce sanctions, filed on june 25, 1999, is denied. The reason for this is that the court finds no misconduct or other basis for sanctions against the defendants based on their responses to the plaintiff's discovery requests. The plaintiff's motions to compel filed on June 16, June 21, June 28, and October 26, 1999, are denied. The normal discovery process has not yielded a satisfactory result in this case, at least from either the plaintiff's perspective or that off the court.

11. The plaintiff's motion for summary judgment clarification filedon July 12, 1999, is granted to the extent that the court has previously issued and will shortly again issue directions regarding the full and fair development of the defendants' motion for summary judgment. Consistent with the indication above, moreover, materials appended to the motion of June 12, 1999, are stricken as redundant and shall be returned to the plaintiff with his copy of this Entry.

12. The defendants' motion for summary judgment is the onlymotion which remains pending at this point. The Plaintiff indicated at a hearing in this matter many months ago that he had not read and/or investigated the legal arguments and citations of authority presented by

the defendants in support of their motion for summary judgment. It may be that in the intervening time he has done so. If he has not done so previously, he should now do so, for the proceedings on which he has embarked, and the fairness to which he si rightly entitled, demand it. The summary judgment process prescribed by the Federal Rules of Civil Procedure contemplates the informed and reasonable participation of all litigants. The court expects nothing less in this case.

IT IS SO ORDERED.

LARRY J. McKINNEY, Judge
United States District Court

Date: April 3, 2000

Copies to:

Louis F, Gaines, 5337 N. College Avenue,
Indianapolis, IN 46220

Hudnall Pfeiffer, Carolyn Coleman,
Baker & Daniels, 300 N Meridian St
Suite 2700, Indianapolis, IN 46204

DEFENDANTS' RECORDS

From: SUEVER, GINNY
Sent: March 23, 1998 5:23 AM
To: All Indy-Only-Mailboxes;
UWS Harrington Park PO
Cc: UNION
Subject: Howard White Services

Good morning everyone:
I have been notified by Howard's Mom - Joyce White - that services for Howard are being held at the Eastside Baptist Church located at 284t Baltimore Avenue. The Calling Ceremony is Tuesday evening, March 24, 1998 from 4pm - 9pm. The funeral is being held Wednesday, March 25, 1998 at 11am and Joyce has invited everyone to attend. She is also trying to arrange a Home Going Celebration for Howard and his friends for later in the day not been confirmed. I will keep you updated.
Thanks

PLEASE POST!

From: KURZHAL, LINDI
Sent: June 08, 1998 12:32 PM
To: All_Indy-Only Mailboxes

FYI: Ray Gilvin suffered a mild stroke last Friday; he is home and doing quite well. Phil Long suffered a heart attack Saturday; he is in the hospital. Please Ray and Phil in your prayers. Thank you.

From: RUSSELL, GEORGE
Sent: January 05, 1999, 6:26 AM
To: HEDGE, CHRIS; BARNES, KEN; COROSARO, KEVIN; WILLS, TOM; WHITMAN, WILLIAM
Subject: Cross trainig
Importance: High

It's a "New Year" and we need to get things started off in the proper direction! I want each of you to provide me with a tentative area/section rotation schedule for each of your employees for the year by 1/25/99 with an effective start time of 2/1/99.
Some supervisors have done a very good job in the past cross training their employees. While others have very little progress over the past 4 years. Bottom line is that this is going to be a "Goal" tht each of you will be expected to achieve during the course of the year and it wil be one of the items that wil effect your annual performance appraisals for 1999.

The schedule needs to include each operator having some time (at least 4-6 weeks or 28 to 42 days whichever is the easiest way for you do do the schedule) in every section of Belmont and Southport. The schedule must include each Ops. Specialist has an equal rotation between both plant and at least 4 or weeks or 28 days time working at solids handling.

It is understood that the schedule must have some

flexibility at times do to short notice vacations, people off sick etc. Each of the supervisor will need to work together to insure that the rotations takes place, especially with the overlap employees.

Please insure that I have the schedule no later than 1/25/99, If anyone has any questions please let me.
Thanks.

PLAINTIFF's "IRREPARABLE INJURY"

OFFICE SERVICES FEE HEENT/LUNG FEE
ORTHOPAEDICS (Cont'd.) FEE
LABORATORY FEE

...

DATE	TIME	PATIENT	REASON
6/3/99	1.15	Louis F. Gaines	Neck Stiffness

DOCTOR	LOCATION
DESILVESTER MD	North Meridian Street

American Health Network of Indiana, Inc.

American Health Network
Billing Department
3400 Lafayette R.
Indianapolis, IN 46220

FED ID 35-1930805

Phone: 317-293-4113

INSURANCE COMPANY	POLICY I.D.
AHN MAXICARE CAP	070016370

NWR ... BUSINESS OFFICE

Northwest
Radiology
Network
Since 1967

5756 W. 71st. Indianapolis, IN 46278
... 317.328.5050
Fax: 317.328-5051
800.400.XRAY (9729)

SERVICE	FEE
Spine Cervical W/OBL (4)	X

...

NORTHWEST RADIOLOGY INDPLS IN
10603 N Meridian
DOS: 6/03/99 ID#: 0322764

NAME:

Gaines, Louis F.
5337 N. College Ave.
Indianapolis, IN

REFERRING DOC:

BAA George DeSilvester

REASON FOR VISIT: CERVICALGIA

INSURANCE INFORMATION

PRIMARY AMERICAN HEALTH
INS CODE AM022
POLICY 070016370

Total Charge For Today's Service: $132.00

HEENT/LUNG FEE

69210 Ear Wax Removal ICD: 380.4

DATE	TIME	PATIENT	REASON
08/04/99	1.0	Louis F. Gaines	Ear Prob/ Can't - Hbains

DOCTOR

DESILVESTER MD

American Health Network of Indiana
FED ID #35-1930805

American Health Network
Billing Department
3400 Lafayette R.
Indianapolis, IN 46222
Phone: 317-293-4113

NORTHSIDE ENT, INC.

Main 317-844-5656
Bus 317-844-6403
Tax ID #35-1462253

ROBERT W. STEPHENS, M.D. F.A.C.S.
JACK V. GOSSETT, M.D. F.A.C.S.

VICKI K. SHELTON, M.D. F.A.C.S.
SCOTT A. HACKETT, M.C. F.A.C.S.

DATE	TIME	PATIENT	REASON
08/12/99	10.00	Louis F. Gaines	Tinnitus

DOCTOR	LOCATION
HACKETT MD	NORTHSIDE ENT MERIDI

DIAGNOSIS: External Ear: Impacted Wax

TODAY's CHARGE $120.00

REFERRING DR. DESILVESTER MD

INSURANCE COMPANY MAXI/AHN

NORTHSIDE ENT, INC.

Main 317-844-5656
Bus 317-844-6403

ROBERT W. STEPHENS, M.D. F.A.C.S.
JACK V. GOSSETT, M.D. F.A.C.S.

VICKI K. SHELTON, M.D. F.A.C.S.
SCOTT A. HACKETT, M.D. F.A.C.S.

DATE	TIME	PATIENT	REASON
10/14/99	10.00	Louis F. Gaines	Ear Pain/ Ringing

DOCTOR	LOCATION
HACKETT MD	NORTHSIDE ENT MERIDI

DIAGNOSIS: Inner Ear: Sensorineural Hearing Loss; Tinnitis Subjective.

TODAY's CHARGE $195.00

REFERRING DR. DESILVESTER MD

INSURANCE COMPANY: AHN / NON CAPPED